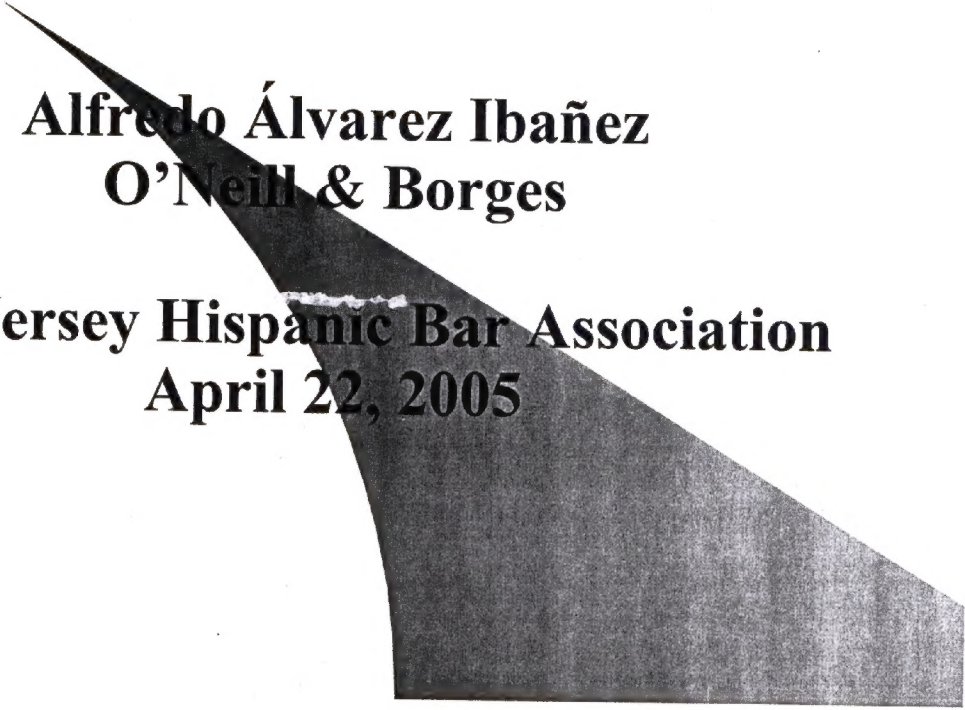


Planning for the Future Legal Aspects to Consider

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Agenda

- Domicile v. Residence
- Real Property v. Personal Property
- Inheritance Laws
- Mortgage and Property Registry Act of Puerto Rico

Overview-Situation 1

- Person A, born and raised in Puerto Rico, moves to New Jersey, where he established several business enterprises. Once in New Jersey, A purchased real and personal properties in Puerto Rico and New Jersey. At the time of his death two (2) of his adult children were living in Puerto Rico and the other two (2) adult children and his widow, a New Jersey resident, were living in New Jersey.



Overview-Situation 2

- Person B was born and raised in Puerto Rico. After divorcing his first wife, with whom he had two (2) children, he moved to New Jersey. In New Jersey he remarried and had two (2) more children. At the time of his death two (2) of his children were living in Puerto Rico and the other two (2) were living in New Jersey. All of his children were under the legal age at the time of his death. His widow is a resident of New Jersey.



The concept of Domicile...

The Political Code [1] of Puerto Rico defines the term “domicile” as the place where one habitually resides when not called elsewhere for labor or other special or temporary purpose, and to which he returns in seasons of repose.[2] In other words, domicile is the place where a person habitually resides with the intent to remain there permanently. Only the union of act and intent can change domicile.[3] The determination of a person’s domicile is one of law and fact.

[1] 1 L.P.R.A. § 1 et seq.

[2] 1 L.P.R.A. § 8.

[3] Zarelli v. Registrador, 124 D.P.R. 543 (1989) and Prawl v. Lafita Delfin, 100 D.P.R. 35 (1971).

The concept of Domicile...

New Jersey case law has defined the term “domicile” as the place where a person has his true, fixed, permanent home, and principal establishment, and to which, whenever he is absent, he has the intention of returning.[4] Domicile is very much a matter of the mind—of intention.[5] The two requisites to establish a domicile of choice are: (1) physical presence, and (2) the concomitant unqualified intention to remain permanently and indefinitely.[6]

[4] State v. Benny, 20 N.J. 238, 250, 119 A.2d 155 (1955) according State v. Atti, 127 N.J.L. 39, 41-42, 21 A.2d 603 (1941), affirmed 128 N.J.L. 318, 25 A.2d 634 (1942).

[5] Lyon v. Glaser, 60 N.J. 259 (1962).

[6] Gosschalk v. Gosschalk, 48 N.J. Super. 566, 572, 138 A.2d 774 (App. Div.), affirmed, 28 N.J. 73, 145 A.2d 327 (1958).

The concept of Residence...

To be a resident of Puerto Rico it is necessary to be present on the Island for at least one year with the intent to return to place of origin or “animus revertendi”. [7] A natural person may have more than one residence but only one domicile. [8] In other words, residence merely means an extended physical presence in the Island with the intention of returning to one's domicile.

[7] Zarelli, Supra.

[8] Martínez v. Viuda de Martínez, 88 D.P.R. 443 (1963); Fiddler v. Secretario de Hacienda, 85 D.P.R. 316 (1962); and Kurilla v. Roth, 132 N.J.L. 213, 38 A.2d 862 (S. Ct. 1944).

Domicile v. Residence

The laws of Puerto Rico and New Jersey are very similar regarding domicile and residence. Persons A and B moved, married, started businesses and lived in New Jersey until their death. Under the laws of both jurisdictions, it can be concluded that both A and B, even when originally domiciled in Puerto Rico, effectively changed their domicile to the state of New Jersey.

The concept of Real Property...

In general, the Civil Code of Puerto Rico[9] (the “Code”) defines real or immovable property as those, that cannot move themselves or be removed from one place to another.[10] This definition however, is applicable only to such things that are immovable by their own nature, and not to such that are so only by provision of law. Things can be considered real property either by their own nature, by their destination or the object to which they are applicable to.[11]

[9] 31 L.P.R.A. § 1 et seq.

[10] 31 L.P.R.A. § 1041.

[11] 31 L.P.R.A. § 1042.

Real Property by its own nature...

The Code [12] classifies the following as real property by their own nature:

1. Lands, buildings, roads and structures of every kind adherent to the soil;
2. Trees, plants and ungathered fruits, while they are not separated from the land or form an integral part of an immovable;
3. Everything attached to an immovable in a fixed manner, in such a way that it cannot be separated from it without breaking or causing injury to the object; and
4. Mines, quarries and slag lands, while the matter thereof forms part of the beds, and waters, either running or stagnant.

[12] 31 L.P.R.A. § 1043.

Real Property by its destination...

The Code [13] classifies the following as real property by their destination:

1. Machinery, vessels, instruments or implements intended by the owner of the tenement for the industry or works that he may carry on in any building or upon any land and which tend directly to meet the needs of the said industry or works;
2. Animal houses, pigeon houses, bee hives, fish ponds or breeding places of a similar nature, when the owner has placed or preserves them with the intention of keeping them attached to the tenement and forming a permanent part thereof;

[13] Id.

Real Property by its destination...

3. Manures or fertilizers intended for the cultivation of the land, when located in the place where they are to be employed;
4. Docks and structures which, though floating, are intended by their nature and the object for which they are designed, to remain at a fixed place in a river, lake, or shore; and
5. Statues, raised works, paintings, or other objects of use or ornament, placed in buildings or on lands or tenements by the owner thereof in such a manner that they become attached permanently to the property.

Real Property due to the object to which they are applicable...

The following are considered real property to the object to which they are applicable:

1. Administrative concessions for public works, and servitudes and other real rights, attached to an immovable^[14];
2. The usufruct and use of immovable things;
3. Any right or obligation established on any immovable; and
4. Every action to recover an immovable or the whole of an inheritance.^[15]

^[14] Id.

^[15] 31 L.P.R.A. § 1044.

The concept of Personal Property...

The Code defines personal or movable property as such things that are susceptible of appropriation and in general, all of those that can be carried from place to place without impairing the immovable to which they may be attached.^[16] Things are movable either by their nature or by provision of law.^[17]

^[16] 31 L.P.R.A. § 1061.

^[17] 31 L.P.R.A. § 1062.

Personal Property by its own nature...

Things movable by their nature are those that may be carried from one place to another, whether they move by themselves, if animate, or by means of an extraneous power, if inanimate.[18]

[18] 31 L.P.R.A. § 1063.

Personal Property by provision of law...

The Code classifies the following as personal property by provision of law:

1. Obligations and actions, the object of which is to recover money due or movables by their nature, even when such obligations are accompanied with a mortgage;
2. Obligations which have a specific performance as their object, and those which from their nature carry with them an indemnization for damages;
3. Shares and partnership interests;[19]

[19] 31 L.P.R.A. § 1064.

Personal Property by provision of law...

4. Rents or annuities, provided they do not encumber real property;
5. Contracts for public services;
6. Receipts and certificates representing mortgage loans;[20] and
7. All corporeal or incorporeal things that are not immovable by nature or by provision of the law.[21]

[20] 31 L.P.R.A. § 1065.

[21] 31 L.P.R.A. § 1067.

Real Property v. Personal Property

Classifying property as real or personal property will be crucial as to the determining the applicable law. The Code provides that personal property is subject to the laws of the owner's domicile, while the laws of the place where the property is located govern real property.[22] Said article will apply to personal [23] and real [24] property regardless of the domicile of its owners.

[22] 31 L.P.R.A. § 10.

[23] Sucn. Shefftz v. Secretario de Hacienda, 93 D.P.R. 888 (1967).

[24] Zarelli v. Registrador, 124 D.P.R. 543 (1989); and Prawl v. Lafita Delfin, 100 D.P.R. 35 (1971). See also Cona v. Henry Hudson Co., 86 N.J.L. 154 (1914) as to New Jersey law.

Real Property v. Personal Property

The laws of Puerto Rico will govern the conveyance of real property located in the Island. In contrast, the laws of New Jersey or the domicile of the decedent at the time of his death will govern matters relating to the disposition and transfer of the estate's personal property.

Principles of Inheritance Law

The Code defines a succession as the transmission of the rights and obligations of a deceased person to his heirs. [25] Our inheritance laws are based on the criterion that the legal position occupied by the deceased will be kept unaltered as much as possible by setting the heirs in his place.[26] Thus, heirs succeed the deceased in all his rights and obligations by the mere fact of his death.[27]

[25] 31 L.P.R.A. § 2081.

[26] Feliciano Suarez, Ex parte, 117 D.P.R. 402 (1986).

[27] 31 L.P.R.A. § 2092.

Principles of Inheritance Law

An inheritance is granted either by the will of the decedent as expressed in a valid will or, in its absence, by provision of law.^[28] It may also be bestowed partly by will and partly by provision of law.^[29]

^[28] 31 L.P.R.A. § 2086.

^[29] Id.

Principles of Inheritance Law

The estate will include not only the rights and obligations of the deceased, in the condition in which they existed at the time of his death, but also includes the property belonging to such estate after the same is opened, and the charges and obligations inherent therein.^[30] Although certain rights are nontransferable, as a general rule our inheritance laws provide for the transferability of all the integral elements of the patrimony of the deceased person.^[31] Hence, the inheritance will include all the property, rights, and obligations of a person that are not extinguished by his death.

^[30] 31 L.P.R.A. § 2083.

^[31] Id.

Testamentary Succession

Testamentary succession results from the institution of any heir or heirs contained in a will executed in accordance with law.^[32] Through a valid will, a decedent may not only distribute the gross estate, but assigned specific rights and obligations.

^[32] 31 L.P.R.A. § 2087.

Intestate Succession

According to the Code[33], an inheritance will be intestate:

1. If a person dies without a will, with an invalid will or one that lost its validity subsequently;
2. When the will does not contain the designation of heirship to all or part of the property, or does not dispose of all the property of the estate;
3. When the condition imposed for the designation of heirship is lacking, or if the heir dies before the testator, or repudiates the inheritance, without having a substitute, and there is no right of accretion; or
4. When the heir designated is disqualified to succeed.

[33] 31 L.P.R.A. § 2087.

Testamentary v. Intestate

The forms and solemnities of wills are governed by the laws of the country in which they are executed.[34] A will executed in a foreign country to convey real property located in Puerto Rico is valid provided it was executed pursuant to the forms and solemnities of said country.[35] Notwithstanding the foregoing, provisions thereof in conflict with substantive local law are not valid.[36] In other words, to the extent that the will is in conflict with local substantive law or is silent as to the conveyance of real property located in Puerto Rico, said inheritance will be considered intestate as to that portion and will be governed by local inheritance provisions.

[34] 31 L.P.R.A. § 11.

[35] Cabrer v. Registrador, 113 D.P.R. 424 (1982); Quiñones v. Escalera Irizarry, 99 D.P.R. 962 (1971); Armstrong v. Armstrong, 85 D.P.R. 404 (1962); and García v. De Jesús, 79 D.P.R. 147 (1956).

[36] *Id.*

Inheritance Provisions

The Code establishes limitations to the freedom to dispose of the testator, who must observe certain minimum rights, which the State guarantees to certain persons.[37] The legal portion is that part of the estate the testator cannot freely dispose of because the law has reserved it for specific heirs, called heirs by force of law.[38] The legal portion of heirs by force of law is composed of two thirds of the hereditary estate.[39]

[37] Viuda de Sambolín v. Registrador, 94 D.P.R. 320 (1967).

[38] 31 L.P.R.A. § 2361.

[39] 31 L.P.R.A. § 2363.

Inheritance Provisions

The legal portion is subdivided in two portions known as the legal legitime and the advantage or extra portion, and each one constitutes one-third of the hereditary estate.^[40] The legal legitime is reserved for the decedent's children and must be equally distributed among them. In contrast, the advantage or extra portion even though it is reserved for the decedent's children or descendants, can be distributed freely among them.^[41] The remaining one third of the estate will be of free disposal.^[42]

^[40] Id.

^[41] 31 L.P.R.A. § 2391.

^[42] Id.

Inheritance Provisions

The Code establishes that the widowed spouse will be entitled to a quota, in usufruct, equal to the amount that corresponds to each one of the children as part of the legal legitime.^[43] The hereditary portion allotted in usufruct to the surviving spouse must be taken from that part of the estate that the testator is permitted by law to apply to advantages or extra portions.^[44]

^[43] 31 L.P.R.A. § 2411.

^[44] 31 L.P.R.A. § 2412.

Inheritance Provisions

In cases of there being children of two or more marriages, the usufruct pertaining to the widowed spouse of the second marriage will be taken from the third of free disposal.^[45] When no betterments are granted under the advantage or extra portion, the usufructuary quota of the surviving spouse will be taken from the legal portion and will be equal to the share corresponding to each child in the division of the legal portion.^[46]

[45] 31 L.P.R.A. § 2416.

[46] Díaz v. Civildanes, 37 D.P.R. 297 (1927).

Inheritance Provisions

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^[47] 31 L.P.R.A. § 2416.

^[48] Díaz v. Cividanes, 37 D.P.R. 297 (1927).

The Registry of Property

The Registry of Property (the “Registry”) is the administrative entity of the Justice Department of Puerto Rico in which a person must register his titles of ownership or of other real rights relating to real property or immovable in order for them to be exceptionable against third parties.^[49] In other words, a title of ownership or of other real right relating to real property not properly inscribed or annotated in the Registry, will not be prejudicial to third parties.^[50]

^[49] 31 L.P.R.A. § 1871.

^[50] 31 L.P.R.A. § 1872..

The Registry of Property

The Mortgage and Property Registry Act of Puerto Rico[51] provides that the title of the estate in property can only be proved through a valid certified will or a declaration of the heirs of a decedent issued by a court with jurisdiction.[52] It is only through those documents that the hereditary rights of a person can be accredited at the Registry.[53]

[51] 30 L.P.R.A. § 2001 et seq.

[52] 30 L.P.R.A. § 2316.

[53] Sucesión Morales v. Registrador, 16 D.P.R. 114 (1910).

The Registry of Property and Testamentary Estates

If a last will was executed, in order to record at the Registry any real property under the name of the heirs of the decedent, the following documents must be presented:

1. Certified copy of the last will together with a certificate of no revocation from the Puerto Rico Registry of Last Wills and Powers of Attorney;
2. Certified copy of the certificate of death; and
3. A tax lien release issued by the Treasury Department of Puerto Rico.

The Registry of Property and Intestate Estates

For intestate estates, in order to record at the Registry any real property under the name of the heirs of the decedent, the following documents must be presented:

1. Certified copy of the judgment issued by a court of competent jurisdiction declaring the heirs of the decedent and that no last will was executed; and
2. A tax lien release issued by the Treasury Department.

The Registry of Property and Estates

The Puerto Rico Internal Revenue Code of 1994^[54], as amended, provides that the Registrar of the Property is forbidden from recording any transfer of property of an estate without the corresponding tax lien release and forbids notary publics from authorizing documents without the corresponding tax lien release.^[55]

^[54] 13 L.P.R.A. § 8001 et seq.

^[55] 13 L.P.R.A. § 9334.

Hereditary Rights

Property under which hereditary rights have been registered cannot be transferred or encumbered without the acquiescence of all the title holders, unless there is a deed of partition and a registered adjudication in favor of the transferor.[56] Only a legally made partition confers upon each heir the exclusive ownership of the property.[57] However, no deed of partition of a decedent's estate or a lien on inheritance rights can be recorded in the Registry if the hereditary rights have not been previously recorded in the heirs' names.[58]

[56] Article 102.1 of Regulation No. 2674 of 1980.

[57] 31 L.P.R.A. § 2901.

[58] 30 L.P.R.A. § 2261.

Hereditary Rights

Until the division of the inheritance is made, no heir will have any specific title on any of the inheritance, since all the heirs own the totality of the estate jointly and in common.[59]

[59] Burgos v. Hernández, 54 D.P.R. 37 (1938).